SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1854

**PEOPLE OF THE STATE OF ILLINOIS, ex rel.
BERNARD J. KORZEN, County Treasurer
and Ex-Officio County Collector of Cook County, Illinois,**

Respondent,

vs.

**FULTON MARKET COLD STORAGE COMPANY,
an Illinois corporation,**

Petitioner.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of Illinois**

BRIEF FOR RESPONDENT IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1857

**PEOPLE OF THE STATE OF ILLINOIS, ex rel.
BERNARD J. KORZEN, County Treasurer
and Ex-Officio County Collector of Cook County, Illinois,**

Respondent,

vs.

**FULTON MARKET COLD STORAGE COMPANY,
an Illinois corporation,**

Petitioner.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of Illinois**

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Cook County (pages 1a-6a of the Petition) is unreported. The opinion of the Illinois Appellate Court is reported at 22 Ill. App. 3d 1088 (1st Dist. 1974), and the opinion of the Illinois Supreme Court is reported at 62 Ill.2d 443 (1976).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

Whether the Illinois Supreme Court's decision requiring the Petitioner to exhaust its statutory administrative remedy constituted a violation of the Petitioner's rights under the Fourteenth Amendment to the United States Constitution.

Whether, considering previous decisions of the Illinois Supreme Court interpreting the Illinois Revenue Act of 1939, the Illinois Supreme Court erred when it held the Petitioner must exhaust its statutory administrative remedy.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to those provisions set forth in the Petition, Respondent calls this Court's attention to Section 113 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1969, Ch. 120, § 594, which provided in pertinent part:

> In counties containing 500,000 or more inhabitants, the board of appeals in any year shall:
>
> (1) On Complaint that any property is over assessed or under assessed, or is exempt, review and order such assessment corrected.

STATEMENT OF THE CASE

The Petitioner (hereafter referred to as the taxpayer) is an Illinois corporation owning property subject to the real estate tax law of Illinois. Respondent (hereafter referred to as the Collector) is the local tax official charged with the collection of real estate taxes pursuant to Illinois law.* The subject matter of this case deals with local real estate taxes assessed against the taxpayer's property for the year 1969, which taxes were payable in 1970.

After paying its 1969 real estate taxes in full and under protest pursuant to section 194 of the Revenue Act of 1939, Ill. Rev. Stat. 1969, Ch. 120, § 675, the taxpayer appeared and objected to the Collector's annual application pursuant to section 235 of the Revenue Act, Ill. Rev. Stat. 1969, Ch. 120, § 716. At the close of the evidence, the trial court granted the Collector's motion to dismiss based upon the taxpayer's admitted failure to exhaust its administrative remedy provided in section 113 of the Revenue Act, Ill. Rev. Stat. 1969, Ch. 120, § 594.

The taxpayer maintained that, in view of the uniformity provisions of the 1870 Illinois Constitution, the Board of Appeals lacked authority to grant relief where a taxpayer's property is subject to a constructively fraudulent assessment. Therefore, the taxpayer argued that it was not required to exhaust an administrative remedy which did not authorize relief.

The Illinois Supreme Court, interpreting section 113 of the Revenue Act, ruled that a constructively fraudulent assessment is an "over-assessment" within the meaning of that section; and that, indeed, the Board of Appeals was empowered to grant relief.

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* Edward J. Rosewell, the present County Treasurer and Ex-Officio County Collector of Cook County, Illinois is the successor in office to the Respondent Bernard J. Korzen.

ARGUMENT

Introduction

We submit that the decision of the Illinois Supreme Court, which the taxpayer petitions this court to review, is a decision based solely upon questions of state law. This Court has long held that it will decline to review a state court's judgment which is based upon independent and adequate state grounds. Illinois provides a taxpayer whose property is assessed at a discriminatory level an opportunity to obtain judicial review of such an assessment once the taxpayer has exhausted his available administrative remedies. Therefore, Illinois real estate taxpayers are afforded the panoply of rights secured to them by the Fourteenth Amendment to the United States Constitution.

I.

THE PETITION RAISES QUESTIONS OF STATE LAW ONLY.

This Court has held on numerous occasions that when a taxpayer's property has been assessed at a disproportionately higher level than other similar property subject to taxation, such discrimination, if proved, constitutes a violation of federally protected rights under the Fourteenth Amendment to the United States Constitution. *Sioux City Bridge v. Dakota County*, 260 U.S. 441 (1923); *Hillsborough v. Cromwell*, 326 U.S. 620 (1946). Illinois courts have consistently held that a taxpayer who proves that his property is assessed at a disproportionately higher level of assessment than other similar property subject to taxation is entitled to relief after exhaustion of his available administrative

remedies. See Argument II, *infra*. Clearly then Illinois law is in compliance with the mandates of the *Sioux City Bridge* and *Hillsborough* decisions.

More important to the instant action is this court's decision in *Mellon v. McCafferty*, 239 U.S. 134 (1915). In that case this court was asked to review a state court's affirmance of the dismissal of an action to enjoin the collection of state taxes. The state court had ruled that the taxpayer's failure to resort to adequate administrative remedies provided by state law barred the action. Upon dismissing the writ of error for want of jurisdiction, this court noted:

> "[T]he duty to resort to the adequate remedies provided could not be escaped by assuming that if they had been resorted to, the wrong complained of would not have been rectified." 239 U.S. at 139.

Clearly, the taxpayer's argument parallels that of the taxpayer in *Mellon*. Here the taxpayer *assumed* that if it appeared before the Board of Appeals to contest its 1969 assessment the error complained of (a constrictively fraudulent assessment) could not have been rectified. That, as the Illinois Supreme Court pointed out, was not the case. Accordingly, we submit that the instant taxpayer seeks not to persuade this Court to interprete new law, but rather to review a decision of the Illinois Supreme Court interpreting Illinois law.

The cases which the taxpayer relies upon to support its exhaustion argument are clearly inapposite. In both *Brinkerhoff-Faris Company v. Hill*, 281 U.S. 673 (1930) and *Montana Bank v. Yellowstone County*, 276 U.S. 499 (1928) the respective state supreme courts had, by previous decisions, deprived each of the taxpayers of an administrative procedure to contest the tax in question. While the taxpayer herein attempts to bootstrap itself within the purview of the above cited decisions, the Il-

linois Supreme Court has never held that the Board of Appeals lacks authority to correct a constructively fraudulent assessment of locally assessed property. Accordingly, we submit that the question raised herein was settled by this Court in *Mellon v. McCafferty, supra.* Therefore, we submit that the Petition fails to present a federal question, important or otherwise.

II.

IN LIGHT OF ITS PREVIOUS DECISIONS INTERPRETING THE REVENUE ACT OF 1939, THE ILLINOIS SUPREME COURT'S DECISION WAS CLEARLY CORRECT.

The taxpayer maintains that in 1969 it was forced to bear a disproportionate share of the tax burden in Cook County because its property was properly assessed, while all other property in Cook County was under valued. The courts of Illinois have held that an Illinois taxpayer who proves that his property is assessed at a constructively fraudulent level is entitled to relief. *People ex rel. Skidmore v. Anderson,* 56 Ill.2d 334 (1974). In such instances the assessment which is placed upon the taxpayer's property, though statutorily correct,* is disproportionately higher than the assessments which are placed on similarly situated property. *Clarendon Associates v. Korzen,* 56 Ill.2d 101, 105 (1973); *People ex rel. County Collector v. American Refrigerator Company,* 33 Ill.2d 501, 505 (1965).

Importantly, Illinois courts have held section 113 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1969, Ch. 120, § 594, to be a condition precedent to the taxpayer's right to seek judicial review of an assessment which is alleged to be constructively fraudulent. *Mix v. The People,* 116 Ill. 265, 273 (1889); *People ex rel. Nordlund v. Lans,* 31 Ill.2d 477, 480 (1964); *People ex rel. County Collector v. Bostwick,* 33 Ill.2d 74, 76-78 (1965); *People ex rel. Needham v. Abbott Estate,* 47 Ill.2d 491, 497 (1970); and *Lopin v. Cullerton,* 26 Ill.App.3d 748, 750 (1st Dist. 1975). The taxpayer, however, contends that it does not fall within the purview of section 113. In 1969 section 113 provided in relevant part:

> In counties containing 500,000 or more inhabitants, the board of appeals in any year shall:
>
> (1) On Complaint that any property is over assessed or under assessed, or is exempt, review and order such assessment corrected.

The taxpayer maintains that since its property was assessed at 60% of its fair cash value in 1969, the only action the Board of Appeals could have taken would have been to raise the assessment to 100% of fair cash value. In view of the uniformity provisions of the 1870 Illinois Constitution,* the taxpayer argues that the Board was powerless to lower the assessment placed on its property to 40% of fair cash value, notwithstanding that property in Cook County was generally assessed at that level in 1969. Accordingly, the taxpayer concludes that it had no duty to appear before the Board of

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* In 1969 section 20(1) of the Illinois Revenue Act of 1939, Ill. Rev. Stat. 1969, Ch. 120, § 501(1) provided in relevant part:

> "Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale."

* The Illinois Constitution of 1970 now provides:

> "Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. . . ." Ill. Const. art. IX, § 4(b) (1970).

Appeals in 1969 because the Board had no authority to grant the taxpayer relief from the excessive assessment challenged.

We submit that the taxpayer's entire argument is built upon the erroneous premise that an over assessment is an assessment in excess of 100% of the fair cash value of the taxpayer's property. Illinois courts have recognized that a constructively fraudulent assessment is, in fact, an over assessment. In *People ex rel. County Collector v. American Refrigerator Company*, 33 Ill.2d 501, 505 (1965) the Illinois Supreme Court found constructive fraud where the taxpayer's property was assessed at 98% of fair market value, while other locally assessed property was assessed at only 55% of fair cash value. In *Clarendon Associates v. Korzen*, 56 Ill.2d 101 (1973), the Illinois Supreme Court held:

> "[W]hen property is assessed disproportionately higher than other similar property . . . or the assessed value is reached under circumstances showing either a lack of knowledge of known values or a deliberate fixing of values contrary to known value, fraud will be inferred." 56 Ill.2d at 105.

The taxpayer's interpretation of section 113 would render the Board of Appeals powerless to remedy assessments that are clearly fraudulent. Incredibly, the taxpayer would put the Board of Appeals in the position of compounding the alleged fraud of which the taxpayer complains!

We submit that the taxpayer's reliance upon *People ex rel. Cain v. Illinois Central R.R. Co.*, 33 Ill.2d 232 (1965) and *C.B. & Q. R.R. Co. v. Department of Revenue*, 17 Ill.2d 376 (1959) is clearly misplaced. In both cases the taxpayers (railroad companies owning real estate in Illinois) attacked allegedly discriminatory multipliers which were applied to locally assessed real estate.

However, the instant taxpayer challenges its original assessment rather than the affect of a multiplier upon that assessment.

We, therefore, respectfully submit that the Illinois Supreme Court correctly ruled that the taxpayer's failure to appear before the Board of Appeals and seek review of its 1969 assessment foreclosed the taxpayer's right to judicial review of that assessment.

CONCLUSION

For the foregoing reasons, the respondent respectfully prays that the Petition for a Writ of Certiorari be denied.

Respectfully submitted.

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